

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE**

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 7091 of 2005

Between:

Velamala Narayana Rao, S/o Satyanarayana,
Thimadam village, Jalumuru Mandal, Srikakulam District.

..... PETITIONER

A N D

- 1 The Joint Collector, Srikakulam.
- 2 The Revenue Divisional Officer, Tekkali, Srikakulam District.
- 3 The Mandal Revenue Officer, Jalumuru Mandal, Srikakulam District.

..... RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the order passed by the 2nd respondent in Rc.No.3174/2004 A dated 13-12-2004 and the consequential order passed by the 1st respondent in SRA No. 7/2005 S2 dated 5-2-2005 , as highly illegal, arbitrary, unjust, improper, without jurisdiction and consequently set-a-side the same and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.BADANA.BHASKARA RAO

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following :

ORDER :

This writ petition is filed to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the order passed by the second respondent in Rc.No.3174/2004-A dated 13-12-2004 and the consequential order passed by the first respondent in SRA.No.7/2005 dated 05-2-2005 as illegal, arbitrary, unjust, without jurisdiction and consequently set aside the same and pass such other order or orders as this court deem fit and proper in the circumstances of the case.

The Revenue Divisional Officer, Tekkali, vide Proceedings in D.dis.No.5085/90-C dated 07-10-1990 had appointed the petitioner as Fair Price Shop Dealer of Thimadam village of Srikakulam district on permanent basis. Accordingly, the petitioner was distributing the essential commodities to the cardholders.

On 13-12-2004, the Revenue Divisional Officer, Tekkali, passed order in Rc.No.3174/2004-A suspending the authorization of the petitioner as Fair Price Shop Dealer of Thimadam village on the basis of the report furnished by the Mandal Revenue Officer, Jalumuru, on the ground that certain irregularities were committed by the petitioner in distribution of essential commodities.

Now the learned counsel appearing for the petitioner, Mr.Badana Bhaskar Rao,

relied on a judgment of this court in **ALIVELAMMA V/s. REVENUE DIVISIONAL OFFICER, DHARMAVARAM, ANANTAPUR DISTRICT** wherein this court held:

“Clause 5 (4) of the Control Order is identical to Clause 3 (4) of Andhra Pradesh Scheduled Commodities (Regulation or Distribution by Card System) Order 1973. Interpreting the same, this Court in B.VENKATESWARA RAO’s case (1997 {1} An.W.R.83) held that issuance of notice contemplated under that Clause is mandatory, before the authorization of a fair price shop dealer is suspended. The question as to whether the suspension is resorted to, as a measure, pending enquiry, or as substantive punishment, would depend on the text of the order passed in the relevant case. In the present case, the expression used is that “the petitioner is temporarily removed as fair price shop dealer”. It partakes the character of almost a substantive punishment, though it is observed that the measure is resorted to, until further orders. Further, in the very District, the appointing authorities have been issuing notices contemplated under Clause 5 (4) of the Control Order, whereas in the present case, the suspension is ordered straightaway”.

While relying the decision of this court (1 supra), the learned counsel for the petitioner submitted that the second respondent has passed orders suspending the authorization of the petitioner without issuing any charge memo, notice or opportunity but on the basis of an alleged report submitted by the third respondent that the petitioner is distributing essential commodities only one or two days in a month and closing the fair price shop and causing much inconvenience to the cardholders and diverting the essential commodities to blackmarket and that apart distributing essential commodities at less weighments and higher rates.

On the other hand, it is represented on behalf of the learned Govt.Pleader for Civil Supplies, Mr.P.Lakshma Reddy that the Mandal Revenue Officer, Jalamuru submitted his reports in Rc.No.523/2004 CS dated 09-12-2004 and also Rc.No.523/2004 CS dated 13-12-2004 that the fair price shop dealer, Mr.Velamala

Narayanarao is selling essential commodities at less weighments and higher rates i.e., Rice @ Rs.6/- (0.75 paise excess) per Kg., Sugar @ Rs.14.50 (1.00 excess) per Kg, Oil @ Rs.11/- (1.50 rupee excess) per litre and that the fair price shop dealer is distributing essential commodities only one or two days in a month and closing the fair price shop and causing much inconvenience to the cardholders and diverting to blackmarkets. Therefore, in view of the reports submitted by the Mandal Revenue Officer, Jalamuru, the Revenue Divisional Officer, Tekkali suspended the authorization of the petitioner on the ground that the petitioner had violated clause 4 and 7 of authorization and clause 16 (2) of Andhra Pradesh Scheduled Commodities (Regulation & Distribution by Card System) Order, 1973.

After hearing the learned counsel appearing for the petitioner as well as the submission made on behalf of the learned Govt.Pleader for Civil Supplies and also as seen from the order impugned, prima facie, it appears that the impugned order does not disclose initiation of any enquiry against the petitioner but on the basis of the reports submitted by the Mandal Revenue Officer, Jalamuru, the Revenue Divisional Officer, Tekkali passed orders in Rc.No.3174/2004-A dated 13-12-2004 suspended the authorization of the petitioner on the ground that the petitioner had violated clause 4 and 7 of authorization and clause 16 (2) of Andhra Pradesh Scheduled Commodities (Regulation & Distribution by Card System) Order, 1973. Therefore under Clause 5 (4) of the A.P. State Public Distribution System Control Order, 2001 contemplates that issuance of notice is mandatory and the impugned order was passed without issuing notice or conducting any enquiry against the petitioner cannot be sustained in law.

In view of not following mandatory provisions contemplated under Clause 5 (4) of the A.P. State Public Distribution System Control Order, 2001 the impugned order passed by the Revenue Divisional Officer, Tekkali in Rc.No.3174/2004-A dated 13-12-2004 suspending the authorization of the petitioner on the ground that the petitioner had violated clause 4 and 7 of authorization and clause 16 (2) of Andhra Pradesh Scheduled Commodities (Regulation & Distribution by Card System) Order, 1973 is illegal, arbitrary and without jurisdiction and consequently the same is set aside. It is, however, left open to the Revenue Divisional Officer to issue notice to the petitioner and conduct enquiry into the irregularities, if any, committed by the petitioner.

In the result, the writ petition is accordingly allowed. However, there shall be no order as to costs.

APRIL 19th, 2005. -----

IS L. ELIPE DHARMA RAO, J.

To

1. 2 CD copies
2. The Joint Collector, Srikakulam.
3. The Revenue Divisional Officer, Tekkali, Srikakulam district.

4. The Mandal Revenue Officer, Jalumuru Mandal, Srikakulam district.
5. The Govt.Pleader for Civil Supplies, High Court of AP, High Court Buildings, Hyderabad.